

BEFORE THE
COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON CONSUMER AND REGULATORY AFFAIRS

BILL 15-823:
THE ALCOHOLIC BEVERAGE PENALTY AMENDMENT ACT OF 2004



Testimony of

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Good morning Chairperson Ambrose and members of the Committee on Consumer and Regulatory Affairs. My name is David Rubenstein and I am the Deputy Attorney General for Public Safety in the Office of the Attorney General for the District of Columbia. The Office of the Attorney General (OAG) is responsible for prosecuting juvenile delinquency offenses, as well as many misdemeanor offenses committed by persons age 18 and older in the District. This includes most quality of life offenses and traffic offenses. Until recently, this included prosecutions of persons arrested for underage purchase, possession or drinking of alcohol under D.C. Code Section 25-1002(a).

Madame Chair, as you know, a number of judicial decisions over the past year have made it nearly impossible for the District's underage purchase, possession or drinking of alcohol law to be effectively enforced. Bill 15-823, the "Alcoholic Beverage Penalty Amendment Act of 2004," co-introduced by you and Councilmember Patterson, would resolve this problem. The Office of the Attorney

General and the Metropolitan Police Department strongly support this bill and encourage the Council to take swift action to ensure that young lives are not lost while the ongoing litigation over the existing statute prevents full and effective enforcement of the District's minimum drinking age.

By way of a brief background, let me explain why it is now impossible for the District to criminally enforce the underage purchase, possession or drinking law. In July of 2003, the District of Columbia Court of Appeals decided Cass v. District of Columbia, 829 A.2d 480 (D.C. 2003), in which Mr. Cass challenged his 1998 misdemeanor conviction for underage possession of alcohol. The Cass Court found that the District's underage possession statute was unclear and, by applying canons of statutory construction, the Court interpreted the statute in effect at the time of Mr. Cass's conviction to impose only civil penalties to the offense. In so doing, the Court noted that the Cass decision did **not** apply to the existing statute, which was amended in 2001.

Because the Cass decision was rendered two years after the statute at issue in the case was amended, it was clear that it did not apply to the existing statute: D.C. Code Section 25-1002. Moreover, an analysis of the existing statute reveals that important aspects of the “Cass” statute, particularly the structure of the “C ass” statute, no longer apply to the current provision. In light of these factors, criminal enforcement of D.C. Code Section 25-1002(a) was not affected by the Cass decision.

However, since the Court of Appeals ruling, debate over the District’s underage purchase, possession and drinking law has continued. The proposed changes would end this ongoing debate.

Until recently, the debate over the existing statute did not substantially affect enforcement. Indeed, despite numerous dismissals, and subsequent appeals taken by the Office of the Attorney General, the police continued to enforce the law and my Office continued to bring charges. However, by mid-May of this year, over 120 cases brought by OAG since 2003, had been dismissed by Judges under the

rationale that Cass was applicable to the existing law. These cases are now on appeal.

On May 25, 2004, however, in a pending civil suit, a Superior Court Judge enjoined the Metropolitan Police Department (MPD) and the Office of the Attorney General, from criminal enforcement of D.C. Code Section 25-1002(a). As a result, today, criminal enforcement of underage persons who purchase, attempt to purchase, possess, or drink¹ alcohol in the District of Columbia has come to a halt.

I recognize that some Councilmembers have struggled with the question of whether underage purchase, possession or drinking of alcohol ought to be decriminalized. Let me share with you today the wisdom of the 40 States where this offense is subject to criminal enforcement.²

¹ Except for those who: (1) violate the District's Open Container law, D.C. Code § 25-1001(a), which prohibits the drinking or possessing of an **open container** of alcohol in a **public place**, (2) pose a danger to themselves or others, or to property, as a result of intoxication, D.C. Code § 25-1001(c) and (d), and (3) present a false identification for purposes of purchasing, possessing or drinking an alcoholic beverage under D.C. Code § 25-1002(c).

² Appendix A, attached, details a State-by State comparison of underage purchase, possession and consumption laws. As illustrated, this conduct is criminal in at least 40 States. Additionally, though the remaining 10 States deem this a civil offense instead, it is possible that local ordinances in municipalities within these States criminalize this conduct. Researching municipal ordinances is nearly impossible to conduct without attending the locality, however.

First, it is widely accepted that underage drinking presents a real public health risk. Indeed, the risk associated with alcohol use among young persons has been correlated to traffic fatalities, violence, sexual assault, poor school performance, suicide attempts, vandalism, property damage, and other harmful behaviors.³ For example, in one study by the Centers for Disease Control and Prevention, more than one-quarter of all college students in the United States reported having driven while intoxicated.⁴ Numerous studies have illustrated that 18-24 year olds are far more likely to binge drink, creating a greater risk with their use of alcohol.

Statistics released by the U.S. Department of Transportation's National Highway Traffic Safety Administration, indicate that in 2002, 24 percent of the drivers between 15 and 20 years of age who were killed in automobile crashes were intoxicated and 29 percent of those

³ See, for example, "Reducing Underage Drinking: A Collective Responsibility", Report by the Institute of Medicine, National Research Council (2003).

⁴ U.S. Centers for Disease Control and Prevention: *National College Risk Behavior Survey* in MORBIDITY AND MORTALITY WEEKLY REPORT, Volume 46 (1997).

who were killed had been drinking.⁵

Second, research supports that the mandatory minimum age of 21 has reduced alcohol related traffic fatalities. History reveals that many states lowered drinking ages from 21 to 18 back in the late 1960's and early 1970's. The result of this was an increase in alcohol related traffic fatalities among this age group. In 1982, when most states had a minimum drinking age of 18, 55 percent of all fatal traffic accidents involving youth were alcohol related. That number has been reduced by more than half since the national mandatory minimum age of 21 was adopted in the mid-1980's. Over the past 20 years, alcohol-related fatal crash rates have decreased by 60 percent for drivers ages 16 to 17 years and 55 percent for drivers ages 18 to 20 years.⁶

Third, civil enforcement alone is not as effective. The possibility of criminal enforcement is a more effective deterrent for young people and is a more effective tool for those charged with enforcing the law.

⁵ National Highway Traffic Safety Administration: *Traffic Safety Facts 2002*.

⁶ Elder, R.W. and Shults, R.A. "Trends in alcohol involvement in fatal motor vehicle crashes among young drivers – 1982-2001" in MORBIDITY AND MORTALITY WEEKLY REPORT, Volume 51 (2002).

Indeed, by decriminalizing the purchase, possession or drinking of alcohol, police or ABRA inspectors are rendered virtually useless in their ability to enforce the law. Let me illustrate: A police officer attempts to question a person who appears to be under 21 and is in possession of, or drinking, alcohol. But, for purposes of this example, assume it is not a criminal offense. Accordingly, the officer can only briefly stop and question the suspect, but if the suspect chooses not to show proof of his age, the officer can only issue a civil citation, relying on the honesty of the suspect that the name and address he is supplying is accurate.

Let's suppose the suspect says that his name is John Doe and he lives at 1600 Pennsylvania Avenue, NW. Though the officer may issue a citation based upon his reasonable belief that the suspect is underage, he has no effective means of confirming the identity or address of the person to whom that citation is issued. Thus, the only persons against whom civil infractions will be enforceable are those who opt to voluntarily provide accurate information when asked.

While the option of criminal enforcement of this law is critical for the above reasons, I am cognizant that young persons make mistakes, and, for that reason, that it is not always necessary to secure a criminal conviction against those who violate the underage purchase, possession or drinking law. For that reason, bill 15-823 remains a reasonable and attractive approach by granting criminal or civil options. Thus, while the effective deterrent and enforcement value remains by providing for a criminal option, the bill also allows either the police or prosecutors, at any stage along the way, to refer a case for civil, rather than criminal enforcement.

Similarly, it is not always necessary to arrest. Indeed, circumstances may well justify forgoing an arrest for a variety of reasons. Accordingly, bill 15-823 also allows MPD the option of issuing criminal citations in lieu of arrest, which is language already adopted by the Council on June 1, 2004 in bill 15-516, the "Omnibus Alcoholic Beverage Amendment Act of 2004." This would allow police officers to effectively enforce the law, while also permitting

limited police resources to remain on the street after issuing such a citation. Additionally, this may, for those who cooperate by providing a valid identification and who otherwise pose no risk, spare offenders the inconvenience of being arrested.

Let me also stress that my Office is sensitive to concerns that first time offenders, who otherwise present no risk to themselves or the public, should not necessarily be subject to a criminal conviction. Accordingly, it has been our practice to offer eligible offenders a diversion program in lieu of prosecution. Indeed, data over the past three years indicates that 90 percent of the persons charged with underage possession were diverted by OAG. The successful completion of the program results in the dismissal of the case without a conviction.

While this program has generally involved community service as its sole component, I am fully committed to working with other District agencies to add alcohol education to this diversion program. To ensure the Council of OAG's commitment to divert eligible offenders, we would support the inclusion of diversion language as an

amendment to bill 15-823, similar to the diversion language contained in D.C. Official Code § 50-2201.05(b)(5). I have forwarded proposed language that would achieve this goal to OAG's Legal Counsel Division for an expedited legal sufficiency review and expect to offer it to the Committee upon completion of that review.

Additionally, OAG recognizes that it may also be appropriate for certain persons arrested and/or charged with underage purchase, possession or drinking – or perhaps any of the offenses included in Section 25-1002 of the D.C. Code – to have the records of their arrest and conviction expunged. Accordingly, I have also forwarded proposed expungement language to OAG's Legal Counsel Division for an expedited legal sufficiency review and expect to offer it to the Committee upon completion of that review.

In sum, Madam Chair, underage drinking is an issue that should be taken seriously as a public health and safety issue in the District of Columbia. Because of the potential dire consequences associated with underage drinking, criminal enforcement remains a

critical option to ensure public safety and deter abuses of the law. Nonetheless, in adopting the criminal citation provision, the offering diversion, and providing for expungement, the law can be approached in a measured manner, as circumstances warrant. Indeed, we can more effectively deter this conduct by maintaining important law enforcement tools available only for criminal offenses, while also offering diversion and expungement where appropriate.

Thank you for the opportunity to testify. I would ask that my written remarks and attachments be incorporated for the record and I am happy to answer any questions.

Underage Purchase, Possession, or Consumption of Alcohol: State-by-State Comparison

| State | Criminal? | Fine for 1st Offense | Other Punishment for 1st Offense |
|----------------|-----------|-------------------------------|---|
| Alabama | Yes | \$25-\$100 | Up to 30 days in jail |
| Alaska | Yes | \$200-\$600 | 1 Year probation, or until 21, which ever is longer |
| Arizona | Yes | Up to \$2500 | Up to 6 months in jail |
| Arkansas | Yes | \$100 - \$500 | Possible probation or essay on alcohol |
| California | Yes | \$250 | 24-32 hours of community service |
| Colorado | Yes | \$250 - \$1000 | Up to 3 - 12 months in jail |
| Connecticut | No | | |
| Delaware | Yes | \$100 If non-Delaware license | Loss of license up to 30 days |
| D.C. | | Up to \$300 | 90 day suspension of license |
| Florida | Yes | Up to \$500 | Up to 60 days in jail |
| Georgia | Yes | Up to \$300 | Up to 6 months in jail |
| Hawaii | Yes | | Maximum is less than 1 year in jail |
| Idaho | Yes | Up to \$1000 | Loss of license up to 1 year |
| Illinois | Yes | Up to \$2500 | Up to 1 year in jail |
| Indiana | Yes | Up to \$500 | Up to 60 days in jail |
| Iowa | Yes | \$100 | |
| Kansas | Yes | Minimum of \$200 | 40 Hours public service / Lose license for 30 days |
| Kentucky | unclear | | |
| Louisiana | Yes | Up to \$100 | Up to 6 months in jail |
| Maine | No | | |
| Maryland | No | | |
| Massachusetts | No | | |
| Michigan | Yes | Up to \$100 | Possible -- treatment/rehabilitation |
| Minnesota | Yes | Minimun of \$100 | |
| Mississippi | Yes | \$200-\$500 | |
| Missouri | Yes | \$50-\$1000 | Up to 1 year in jail |
| Montana | Yes | Up to \$200 | Possible community service |
| Nebraska | Yes | Up to \$500 | Up to 3 Months in jail |
| Nevada | Yes | Up to \$1000 | Up to 6 months in jail |
| New Hampshire | No | | |
| New Jersey | Yes | \$500-\$1000 | Up to 6 months in jail |
| New Mexico | Yes | Up to \$1000 | 30 Hours community service |
| New York | No | | |
| North Carolina | Yes | Up to \$200 | Up to 30 days in jail |
| North Dakota | Yes | Up to \$1000 | Up to 30 days in jail |
| Ohio | Yes | Up to \$1000 | Up to 180 days in jail / Diversion program |
| Oklahoma | Yes | Up to \$100 | Up to 30 days in jail |
| Oregon | No | | |
| Pennsylvania | Yes | | Loss of license for 90 days |
| Rhode Island | No | | |
| South Carolina | Yes | Minimum of \$600 | or 6 months in jail |
| South Dakota | Yes | Up to \$200 | Up to 30 days in jail |
| Tennessee | Yes | Up to \$2500 | Up to 1 year in jail |
| Texas | Yes | \$250-\$2000 | Up to 180 days in jail |
| Utah | Yes | Up to \$1000 | Up to 6 months in jail |
| Vermont | Yes | Up to \$600 | Up to 30 days in jail |
| Virginia | Yes | Up to \$500 | Minimum 50 hours community service / Possible loss of license |
| Washington | Yes | Up to \$5000 | Up to 1 year in jail |
| West Virginia | Yes | Up to \$500 | Up to 72 hours in jail, or 1 year probation |
| Wisconsin | No | | |
| Wyoming | Yes | Up to \$750 | Up to 6 months in jail |